Supreme Court, U.S.
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No. 03-

In the Supreme Court of the United States

IWAN MANDYCZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Sixth Circuit Court of Appeal's finding that the May 1, 2002 Opinion and Order of the District Court Denying Defendant's Motion for Summary Judgment on the defense of laches and that due process does not bar a denaturalization proceeding against an incompetent defendant was not "effectively unreviewable" (and thus not immediately appealable pursuant to the Collateral Order Doctrine set forth in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 571 (1949)) is incorrect.

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Iwan Mandycz, an individual citizen of the United States, residing in the Eastern District of Michigan. On January 12, 2001, the District Court appointed the Very Reverend Father Tarcisio Lucavei, O.S.B.M. as Representative for the Petitioner pursuant to FRCP 17(c) because of the claimed mental incompetency of Defendant. Defendant has no corporate affiliations. Iwan Mandycz is the Defendant in the District Court, and the Appellant in the Sixth Circuit Court of Appeals.

Respondent

Respondent is the United States of America. The United States of America is the Plaintiff in the District Court, and the Appellee in the Sixth Circuit Court of Appeals.

TABLE OF CONTENTS

Question Presented i

Parties to the Proceeding ii

Table of Contents . . . . . iii-iv

Table of Cited Authorities . . . . . v-vi

Opinions Below 1

Statement of Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement of the Case 2

Reasons for Granting the Petition 7

I. The Decision Of The Sixth Circuit Court of Appeals Is Incorrect 7

II. The Question Presented is Important. 17

Conclusion 18

Appendix

Appendix A
Court of Appeals Order Denying Petition for Rehearing, May 4, 2004 . . . . . 1a

Appendix B
Court of Appeals Opinion, December 4, 2003 . . . . 3a

Appendix C
District Court Memorandum Opinion and Order Denying Defendant's Motion for Summary Judgment, May 1, 2002 . . . . . 10a

TABLE OF CITED AUTHORITIES

Cases:

Baumgartner v. United States, 322 U.S. 665 (1944) 11, 13

Chaunt v. United States, 364 U.S. 350 (1960) 11

City of Wyandotte v. Consol. Rail Corp., 262 F.3d 581 (6th Cir. 2001) 10

Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949) 6-9, 16

Costello v. United States, 365 U.S. 265 (1961) 11

DiBella v. United States, 369 U.S. 121 (1962) 9

Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863 (1994) 7

Fedorenko v. United States, 449 U.S. 490 (1981) . . 11

Herman Miller, Inc. v. Palazzetti Imports & Exports, Inc., 270 F.3d 298 (6th Cir. 2001) 10

Johnson, et al. v. Jones, 515 U.S. 304 (1995) 8

Klapprott v. United States, 335 U.S. 601 (1949) . . 12

Lauro Lines v. Chasser, 490 U.S. 495 (1989) 9

Medina v. California, 505 U.S. 437 (1992) 14

Midland Asphalt Corp v. United States, 489 U.S. 794 (1989) 8

Mitchell v. Forsyth, 472 U.S. 511 (1985) 16

Palmer v. City of Chicago, 806 F.2d 1316 (7th Cir. 1987) 9

Schneiderman v. United States, 320 U.S. 118 (1943) 11, 13

Sears, Roebuck Co. v. Mackey, 351 U.S. 427 (1956) 8

Stack v. Boyle, 342 U.S. 1 (1951) 10, 16

United States v. Boigegrain, 122 F.3d 1345 (10th Cir. 1997) 10

United States v. Davis, 93 F.3d 1286 (6th Cir. 1996) 10

United States v. Mandycz, 199 F. Supp. 2d 671 (E.D. Mich. 2002) 1

Statutes:

8 U.S.C. § 1451(a) 3

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 . . . . . 1, 5, 7

Court Rules:

Fed. R. Civ P. 17(c) 3, 4, 18

Administrative Rules:

Rule 109 of *Foreign Administration Manual*, U.S. Department of State 15

Secondary Authority:

Wright Miller, & E. Cooper, Federal Practice and Procedure § 3911 (1992) 8

Petitioner respectfully petitions for a Writ of Certiorari to review the Opinion of the Sixth Circuit Court of Appeals in this case.

OPINIONS BELOW

The Sixth Circuit Court of Appeals Opinion (App. B at 3a) is reported at 351 F. 3rd 222 (6th Cir. 2003), 2003 Fed. App. 0425 P (6th Cir.). The District Court Memorandum Opinion and Order Denying Defendant's Motion for Summary Judgment (App. C at 10a) is reported at *United States v. Mandycz*, 199 F. Supp. 2d 671 (E.D. Mich. 2002).

STATEMENT OF JURISDICTION

The Opinion of the Sixth Circuit Court of Appeals was entered on December 4, 2003. The Court of Appeals entered an Order denying a timely Petition for Panel Rehearing and for Rehearing En Banc on March 4, 2004 (App. A at 1a).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following statutory provisions:

1. 28 U.S.C. §1291. 28 U.S.C. § 1291 provides: "The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the

District Court of the Virgin Island, except where a direct review may be had in the Supreme Court...."

2. The Due Process Clause of the Fifth Amendment of the United States Constitution provides that "No person shall be...deprived of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

In November of 1949, Defendant/Appellant ("Defendant"), Iwan Mandycz, sought a determination from the Displaced Persons Commission (DPC) that he was a Displaced Person under the Displaced Persons Act of 1948, and therefore eligible to immigrate to the United States. (Complaint, J.A. 22).[1] After an investigation and interview by the Army Counter Intelligence Corps, the DPC determined that Defendant was an eligible Displaced Person. (Complaint, J.A. 22-23). On December 1, 1949, Defendant applied for, and was issued, Immigration Visa No. 4403/69, which he used to enter the United States in late December of 1949. (Complaint, J.A. 23). On June 30, 1955, the United States District Court for the Eastern District of Michigan granted Defendant's Petition for Naturalization and issued him Certificate of Naturalization No. 7535606. (Complaint, J.A. 24).

Thirty-eight years passed.

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[1] Citation herein, other than to the Appendix filed with this Petition, are to record documents contained in the Joint Appendix (J.A.) filed by the parties in the Sixth Circuit Court of Appeals.

In March of 1993, historians from the Office of Special Investigations had, in their possession, materials indicating that a man named Iwan Mandycz had allegedly been trained at a camp located near Trawniki, Poland, and had allegedly served at a labor camp near Poniatowa, Poland. (Defendant's Motion for Summary Judgment, Exhibit A, J.A. 157).

More than seven additional years passed.

On April 19, 2000, the Plaintiff/Appellee, the United States of America ("Government") filed a Complaint seeking to revoke Defendant's United States citizenship, pursuant to 8 U.S.C. 1451(a), claiming that, for an eight month period in 1943, Defendant served as a guard at labor camps located in Trawniki and Poniatowa. (Complaint, J.A. 21).

Defendant is an 80-plus-year-old man who has been a naturalized citizen of the United States since 1955 (Complaint, J.A. 23). Defendant suffers from, among other ailments, dementia, loss of cognitive function, impairment of memory and depression associated with Alzheimer's Disease. (Defendant's Motion for Summary Judgment, Appendix A: Medical Records and Reports in Support of Defendant's Motion for Summary Judgment, Items 1-14, J.A. 206-44). On July 5, 2000, Defendant's counsel filed, among other motions, a Motion to Stay Proceedings to Allow for Appointment of Representative Pursuant to Fed. R. Civ P. 17(c) or, in the alternative, Motion for Evidentiary Hearing, because of Defendant's failing mental and physical health (Motions, J.A. 42). Pursuant to stipulation, Mr. Mandycz was examined, at length, by several highly-qualified doctors retained by the Government in September, 2000. The Government's doctors have concurred with the Plaintiff's treating physicians in their diagnosis of Alzheimer's; furthermore, the Government's chosen doctors, Elissa P.

Benedek, M.D., Board Certified in Psychiatry and Neurology, and Charles R. Clark, Ph.D., a Clinical and Forensic Psychologist, opined that the Defendant was not competent to stand trial (Medical Records, J.A. 224):

> While at this time Mr. Mandycz does appear to have some rudimentary understanding of the nature and object of the proceedings against him, and while he does appear interested in his defense, the cognitive and especially memory deficits he currently demonstrates **can be expected to have an adverse impact on his ability to assist properly in his defense.** He will likely find it difficult to follow and understand proceedings as they are occurring, and remember what has occurred, even after brief periods of time. Fatigue will add to confusion. Choices and judgments that will be required will be difficult for him to make in a knowing and intelligent manner. **As time goes on, these abilities he will need to call upon in assisting in his defense, such as they are at the present time, will deteriorate.**
>
> In the final analysis, Mr. Mandycz could be deemed competent at the present time only if nothing more is required of hm than to be physically present in Court, answer questions about his past to the extent that he maintains memory, and to be passively compliant with decisions made by others on his behalf. These are all things he can do. **This does not appear sufficient to meet legal requirements for competency to stand trial, however. Mr. Mandycz appears to be incompetent.** (Emphasis added.)

On January 12, 2001, the District Court appointed a Representative for the Defendant pursuant to FRCP 17(c),

which, by its plain language, only permits the appointment of such a representative for "Infants or Incompetent Persons." (Memorandum Opinion and Order Denying Motion to Dismiss, J.A. 90).

On February 28, 2002, the Defendant filed a Motion for Summary Judgment, asserting three arguments: (1) that the affirmative defense of laches bars the Government's action; (2) that due process bars the Government's action because the Defendant is incompetent; and (3) that, at the very least, the Court should hold an evidentiary hearing on the issue of the Defendant's incompetence (Motion, J.A. 112).

On April 19, 2002, the District Court entered an Order that deemed the Defendant's due process argument "colorable", but declined to rule on this issue until the underlying factual issue of Defendant's competence was resolved (Order, J.A. 576). On May 1, 2002, the District Court entered an Opinion and Order Denying Defendant's Motion for Summary Judgment, in its entirety, thereby reversing its previous Order and cancelling the evidentiary hearing (App. C at 10a). In that Order, the District Court concluded, as a matter of law, that the defense of laches is not available to a defendant in a denaturalization proceeding (App. C at 14a). The District Court also concluded, as a matter of law, that due process does not bar a denaturalization proceeding against an incompetent defendant (App. C at 17a).

On July 1, 2002, the Defendant timely filed a Notice of Appeal with the District Court pursuant to 28 U.S.C. § 1291 and the Collateral Order Doctrine (Notice of Appeal, J.A. 40). On July 3, 2002, the Defendant filed a Motion for Stay Pending Appeal and Request for Expedited Consideration, asking the District Court to stay any and all further proceedings, including the impending July 16, 2002 trial,

while the Court of Appeals decides the two legal questions presented by the May 1, 2002 Order (Motion and Request, J.A. 818). On July 15, 2002, the District Court entered an Order granting the Defendant's Motion for Stay Pending Appeal (Order, J.A. 977).

On or about July 8, 2002, the Government filed a motion in the Sixth Circuit Court of Appeals to dismiss the appeal for lack of jurisdiction. The Defendant timely responded. On August 13, 2002, a three judge panel the Sixth Circuit Court of Appeals referred the Government's Motion to Dismiss to the panel assigned to hear this appeal on the merits, finding, "The question of whether the district court's ruling is an appealable collateral order is intertwined with the merits of the appeal."

On October 2, 2003, counsel for Defendant received notification that oral argument in this case was scheduled before a Panel of the Sixth Circuit for December 9, 2003, consistent with Defendant's request.

On December 4, 2003, the Panel, without oral argument, issued an opinion dismissing Defendant/Appellant's interlocutory appeal for lack of jurisdiction. (App. B at 3a). The gravamen of the Panel's holding was that Defendant cannot satisfy the third prong of the Collateral Order Doctrine as set forth in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949), insofar as the order in dispute was not "effectively unreviewable" on appeal from a final judgment of the District Court (App. B at 8a - 9a).

Defendant, therefore, timely filed a Petition for Panel Rehearing or Rehearing En Banc, which was denied on March 4, 2004 (App. A at 1a).

The Trial in this matter is scheduled to commence on June 14, 2004.

REASONS FOR GRANTING THE PETITION

I. The Decision Of the Sixth Circuit of Appeals Is Incorrect.

Orders that do not conclude an action may nonetheless be appealable by right as a final decision under 28 U.S.C. § 1291, if they fall within the Collateral Order Doctrine. *See Cohen Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949). To qualify under this Doctrine, an order must:

(1) conclusively determine a disputed question;
(2) resolve an important issue separate from the merits of the action; and
(3) be effectively unreviewable on appeal from a final judgment.

Significantly, the District Court found that the first two (of three) elements of the Collateral Order Doctrine are satisfied in this case:

> Clearly, this Court's May 1, 2002 order conclusively determined the questions in dispute. Further, at least Defendant's due process argument raises an "important" question under Cohen because "[w]here statutory and constitutional rights are concerned, 'irretrievabl[e] los[s] can hardly be trivial." Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863, 879 (1994) (alteration in original). Finally,

> whether due process protects Defendant from being subject to suit is clearly separate from the merits of this case.

(Order Granting Motion for Stay, J.A. 701).

Thus, the focus in determining whether the Court of Appeals has interlocutory jurisdiction is whether the District Court's Memorandum Opinion, and Order Denying Defendant's Motion for Summary Judgment is "effectively unreviewable" upon appeal.

Generally, in order to be effectively unreviewable, "the order at issue [must] involve an asserted right, the legal and practical value of which would be destroyed if it were not vindicated before trial." *Midland Asphalt Corp v. United States*, 489 U.S. 794, 799 (1989) (internal quotations omitted). The requirement that the issue underlying the order be "effectively **unreviewable**'" later on, for example, means that failure to review immediately may well cause significant harm. See *15A C. Wright Miller, & E. Cooper, Federal Practice and Procedure* § 3911, pp. 334-335 (1992); *see also Johnson, et al. v. Jones*, 515 U.S. 3.4, 311 (1995). Similarly, Justice Frankfurter, citing to *Cohen* and the Collateral Order Doctrine as support, stated in his concurrence in *Sears, Roebuck Co. v. Mackey*, 351 U.S. 427 (1956)[2] that "the Court has permitted appeal before completion of the whole litigation when failure to do so would preclude any effective review or would result in irreparable injury." The analysis, therefore, focuses on the actual harm to Defendant by concluding that an order is effectively

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[2] While the Collateral Order Doctrine is not directly implicated in this case, the case does address "premature" appeals.

unreviewable "when the practical effect of the order will be irreparable by any subsequent appeal." *DiBella v. United States*, 369 U.S. 121, 126 (1962). Moreover, Defendant need not actually suffer harm; rather, the "unreviewability" requirement necessitates a showing only that there is a "danger" that irreparable harm will occur absent immediate appeal. *Palmer v. City of Chicago*, 806 F.2d 1316, 1319 (7th Cir. 1987)(citation omitted). Indeed, this was the situation in *Cohen* itself, where there was simply the danger that "the fees would disappear into insolvent hands." *Id.*

In *Lauro Lines v. Chasser*, 490 U.S. 495, 499-500 (1989)(internal quotations and citations omitted), the Supreme Court summarized its precedent in this area as follows:

> We have thus held in cases involving criminal prosecutions that the deprivation of **a right not to be tried** is effectively unreviewable after final judgment as is immediately appealable. Similarly, in civil cases, we have held that the denial of a motion to dismiss based upon a claim of **absolute immunity from suit** is immediately appealable prior to final judgment, for the essence of absolute immunity is its possessor's entitlement not to have to answer for his conduct in a civil damages action. And claims of qualified immunity may be pursued by immediate appeal, because qualified immunity too is an **immunity from suit.** (Emphasis added.)

In analyzing whether Defendant's incompetency and laches claims are effectively unreviewable in this matter, the Sixth Circuit relied largely on cases in which the subject matter had a relatively tenuous connection to the fundamental rights of the defendant. Moreover, the harm that may have resulted from an erroneous decision by the District Court in

those cases can be quantified and remediated so as to truly provide "effective relief" upon appeal. For example, the Sixth Circuit cited *Herman Miller, Inc. v. Palazzetti Imports & Exports, Inc.*, 270 F.3d 298 (6th Cir. 2001), as a case indicating that the instant matter would be effectively reviewable upon appeal. In *Herman Miller*, the Sixth Circuit considered whether there was sufficient factual evidence to raise an issue of fact as to whether a furniture manufacturer's trade dress in a lounge chair and ottoman had acquired a secondary meaning. The Sixth Circuit also cited *City of Wyandotte v. Consol. Rail Corp.*, 262 F.3d 581 (6th Cir. 2001), on the same point of reason. That case involved a dispute concerning whether a railroad company was obligated to undertake certain construction improvements pursuant to a contract. To be sure, these cases do not bring to bear the type of fundamental rights that are the subject matter of the instant case. For this reason, what guidance they may provide on the appropriateness of interlocutory review in the present circumstances is of limited value.

More accurate analogies can be drawn to cases in which orders by the District Court resulted in a loss of liberty. One such case, *United States v. Davis*, 93 F.3d 1286 (6th Cir. 1996), stands for the proposition that orders of commitment for psychiatric examination are immediately appealable. The premise here, as the Sixth Circuit in the instant case correctly noted, is that "no remedy exists down the line for the resulting loss of liberty." (App. B at 6a, citing *Stack v. Boyle*, 342 U.S. 1 (1951); *see also United States v. Boigegrain*, 122 F.3d 1345, 1349 (10th Cir. 1997)("A defendant must not be left without recourse to appellate review where there is an immediate and significant loss of personal liberty").

In similar vein, forcing a mentally incompetent man to endure the tremendous strains of trial invades his liberty interests in the same, profoundly grievous fashion. As demonstrated earlier, the Government's *own examining physicians* acknowledged Defendant's mental incompetency. Further, Paul A. Cullis, M.D., F.A.A.N., one of Defendant's examining physicians, unequivocally stated that undergoing a deposition would probably be detrimental to Defendant's already precarious mental well-being: "I believe that being in a deposition would put Mr. Mandycz under great emotional strain and would probably worsen his agitated depression." (Medical Records, J.A. 211). Though Dr. Cullis's focus was on depositions, it stands to reason that a trial would present even *greater* emotional strains, and exacerbate the attendant maladies.

Although Petitioner acknowledges that a denaturalization proceeding is technically a civil proceeding in equity, federal courts repeatedly recognize the fact that denaturalization cases differ sharply from typical civil cases, both as to the issues involved and the consequences at stake. For instance, the Supreme Court in *Fedorenko v. United States,* 449 U.S. 490, 505 (1981) stated:

> **On the one hand, our decisions have recognized that the right to acquire American citizenship is a precious one, and that once citizenship has been acquired, its loss can have severe and unsettling consequences**. See *Costello v. United States*, 365 U.S. 265, 269 (1961); *Chaunt v. United States,* 364 U.S. at 353; *Baumgartner v. United States*, 322 U.S. 665, 675-676 (1944); *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

It is the nature of these cases that justifies imposing the heightened, "clear, convincing, and unequivocal" evidentiary burden on the Government, as any "less exacting standard would be inconsistent with the importance of the right that is at stake in a denaturalization proceeding. *Id.* at 505-06.

In *Klapprott v. United States*, 335 U.S. 601 (1949) Justice Rutledge gave eloquent voice to the fundamental tension inherent in defining denaturalization cases as civil actions. A portion of that concurrence, omitting the citations, reads as follows:

> To treat a denaturalization proceeding, whether procedurally or otherwise, as if it were nothing more than a suit for damages for breach of contract or one to recover overtime pay ignores, in my view, every consideration of justice and of reality concerning the substance of the suit and what is at stake.
>
> To take away a man's citizenship deprives him of a right no less precious than life or liberty, indeed of one which today comprehends those rights and almost all others. To lay upon the citizen the punishment of exile for committing murder, or even treason, is a penalty thus far unknown to our law and at most but doubtfully within Congress' power. Yet by the device or label of a civil suit, carried forward with none of the safeguards of criminal procedure provided by the Bill of Rights, this most comprehensive and basic right of all, so it has been held, can be taken away and in its wake may follow the most cruel penalty of banishment.
>
> No such procedures could strip a natural-born citizen of his birthright or lay him open to such a penalty. I

have stated heretofore the reasons why I think the Constitution does not countenance either that deprivation or the ensuing liability to such a punishment for naturalized citizens.

Those views of the substantive rights of naturalized citizens have not prevailed here. But the *Schneiderman* decision and *Baumgartner v. United States*, **required a burden of proof for denaturalization which in effect approximates the burden demanded for conviction in criminal cases, namely, proof beyond a reasonable doubt of the charges alleged as cause for denaturalization.** This was in itself and to that extent recognition that ordinary civil procedures, such as apply in suits upon contracts and to enforce other purely civil liabilities, do not suffice for denaturalization and all its consequences. More than this it was not necessary to decide in the cases cited. **No less should be required, in view of the substantial kinship of the proceedings with criminal causes, whatever their technical form or label.**

* * *

I cannot assent to the idea that the ordinary rules of procedure in civil causes afford any standard sufficient to safeguard the status given to naturalized citizens. If citizenship is to be defeasible for naturalized citizens, other than by voluntary renunciation or other causes applicable to native-born citizens, the defeasance it seems to me should be surrounded by no lesser protections than those securing all citizens against conviction for crime. **Regardless of the name given it, the denaturalization proceeding when it is successful has all the consequences and effects of a penal or criminal conviction, except that the ensuing liability to deportation is a greater penalty**

than is generally inflicted for crime. 335 U.S. 601, 616-19. (emphasis added).

Defendant submits that citizenship is clearly a fundamental right. Naturalized citizens are not second-class citizens, but are entitled to all of the rights, privileges, and immunities, and Due Process protections guaranteed to all American citizens by the Constitution.

Defendant submits that while he is incompetent, under the Due Process Clause, he has a right not to be subject to a denaturalization proceeding. *See, e.g., Medina v. California*, 505 U.S. 437, 449 (1992)(noting that in criminal cases, "a defendant has a constitutional right 'not to be tried while legally incompetent,' and that a State's failure to observe procedures adequate to protect a defendant's rights not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial'"). Defendant submits that the highly unique circumstances inherent in a denaturalization proceeding warrant a similar application of the due process right to a fair trial and an immediate review of the substantive issues in the instant case. Denaturalization proceedings seek to strip away the fundamental and precious right of United States citizenship; a safeguard requiring the citizen defending such an action to be competent to assist in his or defense is a fair, just, and measured approach to a complex and unique area of the law, especially when all of the alleged events occurred, if at all, well over fifty years ago.

Defendant's ability to assist counsel in his defense is crucial in a denaturalization proceeding, and is a role that cannot be filled by a Court-appointed Representative. Forcing an elderly man to account for and, in effect, prove his innocent whereabouts for an eight-month period in 1943 Europe is difficult enough, considering the passage of time,

the death and incapacitation of witnesses, the language barrier(s), and the physical location of potential evidence. Defendant's progressively worsening Alzheimer's Disease together with the memory loss, loss of cognitive function, dementia and associated depression have combined to make it virtually impossible to assist in his defense or understand the nature of the proceedings against him.

Furthermore, the Government's case against Mr. Mandycz is extraordinarily circumstantial. The Government has no eyewitness testimony whatsoever, either as to Defendant's whereabouts and activities during World War II or as to Defendant's naturalization process. The Government's case rests almost entirely on fragments of alleged German wartime documents and inherently unreliable and contradictory Soviet-era "interrogation protocols" allegedly authored in 1947 and 1948.

If Defendant were competent, defending against such evidence would be difficult enough, given the incredible temporal, historical, geographical, and political obstacles Defendant faces. The stakes and evidentiary obstacles involved in this case requires that Defendant, at a minimum, be competent to stand trial, assist in his defense, and understand the nature of the proceedings against him. Because of the interests at stake, Defendant's incompetence, coupled with the damage that a trial would inflict on Defendant, and the irreparable harm that could result, in essence leaves Defendant without an adequate remedy should the trial go forward.

Furthermore, the law recognizes that **incompetent persons may not renounce their United States citizenship**, and the U.S. Department of State acknowledges this principle in Rule 109 of its Foreign Administration Manual:

a. Special attention must be given to would-be renunciants whose mental competency is in question. A person suffering from a mental disorder or defect of such severity that the person in incapable of understanding the nature or consequences of renunciation is considered to be acting involuntarily.

(Renunciation of Citizenship, J.A. 638).

Because no adequate remedy would exist "down the line" to address the anticipated exacerbation of Defendant's mental or physical condition caused by a trial, a loss of liberty and/or basic freedom are threatened.

The major premise underlying the Collateral Order Doctrine is that certain judicial determinations results in a loss of rights that "cannot be effectively vindicated after the trial has occurred." *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985) ("A major characteristic of the denial or granting of a claim appealable under *Cohen's* 'collateral order' doctrine is that 'unless it can be reviewed before [the proceedings terminate], it can never be reviewed at all.'") (quoting *Stack v. Boyle*, 342, U.S. 1, 12 (1952) (opinion of Jackson, J.)).

Defendant is an elderly man in his eighties, suffering from mental and physical ill-health. Indeed, the Defendant submits that Defendant cannot withstand a trial. The Defendant's incompetence and declining health have prejudiced his defense in every conceivable facet of this proceeding. The Government's lack of diligence contributed to the circumstance which Defendant now faces. In the instant case, the Government waited more than seven years to bring the Complaint against the Defendant, at a point in time where

Defendant's poor medical condition made it impossible for him to assist in his defense. There is no remedy afforded to the Defendant from being put through a trial where Doctors state the trial would injure his mental and physical state and cause him further to deteriorate. The Defendant is indeed mentally incompetent, and the predicate for that incompetency is his deteriorating mental circumstances. No review on appeal under this unique set of circumstances will remedy the injury to the Defendant's physical and mental health by being put through a trial. As a result, Defendant submits this case is "effectively unreviewable."

The major thrust of Defendant's submissions before this Court is that the very trial of this incompetent man will cause these injuries and therefore cannot ever be undone upon review. If our system of justice means anything to an American citizen, it must afford this most fundamental protection.

II. The Question Presented is Important.

The substantive legal issues presented on appeal, including whether an incompetent person can be forced to stand trial in a denaturalization proceeding, where the heightened burden of proof applies, has not been addressed by the U.S. Supreme Court or any Federal Court of Appeals, and the adjudication would fill a critical precedential void in the jurisprudence relating to denaturalization proceedings.

Defendant submits that because of the inherent similarities between a denaturalization proceeding and a criminal proceeding, especially with regard to the peril to which a defendant is exposed and the incredible disparity in resources between the parties, this Court should decide an open legal question and determine that due process requires that a

denaturalization defendant be competent to stand trial on an immediate and interlocutory basis. Otherwise, Defendant's constitutional rights and protections and effective appellate review of these issues would be lost after a trial has occurred.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

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Dated: June 1, 2004

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 02-1846

[Filed March 4, 2004]

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)
v.	)
IWAN MANDYCZ, Defendant-Appellant.	)

BEFORE: COLE and CLAY, Circuit Judges; and COLLIER,* District Judge.

ORDER

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote

* Hon. Curtis L. Collier, United States District Judge for the Eastern District of Tennessee, sitting by designation.

on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 02-1846

[Filed December 4, 2003]

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

IWAN MANDYCZ,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Michigan at Flint
No. 00-40148
Paul V. Gadola, District Judge

BEFORE: COLE and CLAY, Circuit Judges; and COLLIER,* District Judge.

* Hon. Curtis L. Collier, United States District Judge for the Eastern District of Tennessee, sitting by designation.

OPINION

R. GUY COLE, JR., Circuit Judge. Plaintiff-Appellee, the United States, moves to dismiss the interlocutory appeal of Defendant-Appellant, Iwan Mandycz, for lack of jurisdiction. Because the district court's denial of Mandycz's motion for summary judgment was not a "final order" of the district court pursuant to 28 U.S.C. § 1291, we dismiss Mandycz's interlocutory appeal for lack of jurisdiction.

In the underlying complaint, the Government seeks Mandycz's denaturalization based on his alleged service at two Nazi-run labor camps during World War II. In the district court, Mandycz moved for summary judgment on two grounds. First, he claimed that laches bars the denaturalization action because the Government unreasonably delayed filing its complaint and that the delay prejudiced Mandycz because his mental capacity diminished in the intervening period. Second, he claimed that the denaturalization action should be dismissed because he is mentally incompetent. Mandycz contends that he suffers from Alzheimer's disease and cannot effectively participate in his own defense.

Initially, the district court ordered a competency hearing and requested briefing from both parties on the applicability of mental competency standards to denaturalization proceedings. However, after considering the parties' briefs, the court ruled that incompetency to stand trial is not a defense to a denaturalization action. The court, therefore, cancelled the competency hearing. The district judge also held that laches is unavailable as a defense against the Government in a denaturalization proceeding. Accordingly, the district court denied Mandycz's motion for summary judgment. The district court later denied Mandycz's request to certify the

competency and laches issues in an interlocutory appeal to this Court pursuant to 28 U.S.C. § 1292(b). The instant uncertified interlocutory appeal followed. Although trial was scheduled to begin on July 16, 2002, the district court granted Mandycz's motion for a stay of the trial's commencement pending our disposition of the instant appeal.

The Government now moves to dismiss the interlocutory appeal on the ground that this Court lacks jurisdiction to consider it because the district court's denial of Mandycz's motion for summary judgment was not a final order. Mandycz opposes the Government's motion to dismiss, contending that the competency and laches issues are immediately appealable pursuant to the collateral order doctrine set forth in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949).

This Court's jurisdiction is limited to "final decisions" of the district courts. 28 U.S.C. § 1291. However, the collateral order doctrine establishes that a "small class" of interlocutory appeals are immediately appealable, since they amount to "final decisions" within the meaning of 28 U.S.C. § 1291. *Cohen*, 337 U.S. at 546. That small class of appealable collateral orders "includes only decisions that are conclusive, that resolve important questions separate from the merits, and that are effectively unreviewable on appeal from the final judgment in the underlying action." *Swint v. Chambers County Com'n*, 514 U.S. 35, 42, 115 S. Ct. 1203, 131 L. Ed. 2d 60 (1995) (citing *Cohen*, 337 U.S. at 546). "If the order at issue fails to satisfy any one of these requirements, it is not appealable under the collateral-order exception." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 276, 99 L. Ed. 2d 296, 108 S. Ct. 1133 (1988).

Even if the district court's ruling on the mental competency and laches issues was conclusive and separate from the merits of the action, Mandycz cannot satisfy the third prong of the collateral order analysis, which requires that the order be "effectively unreviewable" on appeal from a final judgment of the district court. Rights that are effectively unreviewable on appeal are those that "cannot be effectively vindicated after the trial has occurred." *Mitchell v. Forsyth*, 472 U.S. 511, 525, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985) ("A major characteristic of the denial or granting of a claim appealable under *Cohen's* 'collateral order' doctrine is that 'unless it can be reviewed before [the proceedings terminate], it can never be reviewed at all.'") (quoting *Stack v. Boyle*, 342 U.S. 1, 12, 72 S. Ct. 1, 96 L. Ed. 3 (1952) (opinion of Jackson, J.)). Orders implicating claims of immunity - or claims tantamount to immunity - are the most common examples of collateral orders because immunity is "an entitlement not to stand trial or face the other burdens of litigation." *Id.* at 526 (district court's denial of a claim of absolute immunity is an order appealable before final judgment). Pursuant to similar reasoning, the Supreme Court has also held immediately appealable orders denying a motion to dismiss an indictment on double jeopardy grounds, *Abney v. United States*, 431 U.S. 651, 52 L. Ed. 2d 651, 97 S. Ct. 2034 (1977), and orders denying a motion to dismiss an indictment based on immunity rooted in the *Speech and Debate Clause of the United States Constitution*, *Helstoski v. Meanor*, 442 U.S. 500, 99 S. Ct. 2445, 61 L. Ed. 2d 30 (1979).

Other effectively unreviewable orders are those that result in a loss of liberty that cannot be corrected on appeal. For instance, the Supreme Court has held that an order denying a motion to reduce bail is reviewable as a collateral order because if the appeal was not allowed, no remedy exists down

the line for the resulting loss of liberty. *Stack v. Boyle*, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951). In addition, it is well-established that orders of commitment for psychiatric examination are immediately appealable. *See, e.g., United States v. Davis*, 93 F.3d 1286 (6th Cir. 1996). In *Davis*, the Sixth Circuit explained:

> [L]oss of liberty occasioned by the commitment for examination, and the forced intrusion of a court-ordered psychiatric examination, are completely unreviewable by the time of final judgment. Appellate review after final judgment would be available only if the defendant is found guilty, and even then, no effective relief could be provided for her loss of liberty during the period of commitment.

93 F.3d at 1289 (citing *United States v. Weissberger*, 292 U.S. App. D.C. 412, 951 F.2d 392, 396 (D.C. Cir. 1991). The competency and laches issues decided by the district court in Mandycz's case fail the *Cohen* analysis and do not fall into the small class of orders that courts have found immediately appealable. First, both issues are fully reviewable on appeal after a decision on the merits. Second, neither the competency nor the laches issue is tantamount to immunity nor entails an uncorrectable loss of liberty along the lines of psychiatric commitment or the denial of bail.

Although Mandycz argues that his incompetency claim - if accepted by the court as equivalent to that of a criminal defendant's incompetency claim - is tantamount to immunity, a finding that a criminal defendant is incompetent merely postpones the proceedings until such time that the defendant

is competent to stand trial.[1] Unlike the protection afforded by absolute immunity or the Double Jeopardy Clause, the incompetency of a criminal defendant does not implicate an absolute right not to be tried. *Mitchell*, 472 U.S. at 525. Accordingly, courts that have addressed this issue have consistently ruled that competency determinations - unlike commitment orders - are not appealable as collateral orders because they are fully reviewable following the final judgment of the district court. *See United States v. Mattison*, 904 F.2d 709, 1990 WL 75252, at *1 (6th Cir. June 6, 1990); *see also United States v. Caraza*, 843 F.2d 432, 436 (11th Cir. 1988); *United States v. Vamos*, 797 F.2d 1146, 1150-51 (2d Cir. 1986), *cert. denied*, 479 U.S. 1036, 107 S. Ct. 888, 93 L. Ed. 2d 841 (1987); *United States v. Bendicks*, 439 F.2d 1120, 1121 (5th Cir. 1971) (per curiam). We therefore find that the district court's ruling concerning a defendant's competency in

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[1] Denaturalization proceedings are technically considered suits in equity, not criminal actions. *Fedorenko v. United States*, 449 U.S. 490, 516, 101 S. Ct. 737, 66 L. Ed. 2d 686 (1981). However, because at present, mental incompetency is only recognized as a defense to trial in criminal proceedings, our analysis is necessarily based on the corpus of law encompassing mental incompetency in the context of criminal cases. In civil cases, the competency of a defendant is not irrelevant, of course. Incompetent and infant civil defendants are entitled to the appointment of a guardian *ad litem*. *See* Fed. R. Civ. P. 17(c). However, a civil defendant's mental incompetence does not trigger an abatement of trial as it does in the criminal context. The district court has never made a finding concerning Mandycz's competence, but it has appointed him a guardian *ad litem*. In his interlocutory appeal, however, Mandycz claims that the mental incompetency standards and protections applicable in criminal cases should also apply to denaturalization proceedings.

denaturalization proceedings is not appealable as a collateral order.

Although the Sixth Circuit has not considered the laches defense in the context of *Cohen*, it routinely reviews laches claims after decisions on the merits, indicating that these decisions are effectively reviewable on appeal. *See, e.g., Herman Miller, Inc. v. Palazzetti Imports & Exports, Inc.*, 270 F.3d 298 (6th Cir. 2001); *City of Wyandotte v. Consol. Rail Corp.*, 262 F.3d 581 (6th Cir. 2001). Other courts have explicitly refused to consider laches claims on an interlocutory basis. *See, e.g., Timpanogos Tribe v. Conway*, 286 F.3d 1195, 1200 (10th Cir. 2002). In addition, it is well-settled in this circuit that an order denying a motion to dismiss on statute of limitations grounds is not immediately appealable pursuant to the collateral order doctrine. *United States v. Pi*, 174 F.3d 745, 750-51 (6th Cir. 1999) (citing *United States v. Davis*, 873 F.2d 900, 908-09 (6th Cir.), *cert. denied*, 493 U.S. 923 (1989)); *see also United States v. Weiss*, 7 F.3d 1088, 1089-91 (2d Cir. 1993). This Court explained that "unlike the protection afforded by the Double Jeopardy Clause," a statute of limitations defense "does not . . . encompass a 'right not to be tried' which must be upheld prior to trial if it is to be enjoyed at all." *Davis*, 873 F.2d at 909 (quoting *United States v. MacDonald*, 435 U.S. 850, 861, 98 S. Ct. 1547, 56 L. Ed. 2d 18 (1978)). Because laches is an equitable defense similar to a statute of limitations, we find the same reasoning applicable. Therefore, we hold that an order denying a motion to dismiss or a motion for summary judgment on laches grounds is not immediately appealable pursuant to the collateral order doctrine.

For the foregoing reasons, this Court lacks jurisdiction to consider Mandycz's interlocutory appeal. Accordingly, the appeal is DISMISSED.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL CASE NO. 00-40148

[Filed May 1, 2002]

UNITED STATES OF AMERICA,
Plaintiff,

v.

IWAN MANDYCZ,
Defendant.

MEMORANDUM OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Before the Court is Defendant Iwan Mandycz's motion for summary judgment [docket entry 85]. Pursuant to Local Rule 7.1(e)(2), the Court has determined that oral argument will not significantly aid in the disposition of this motion. For reasons set forth below, this Court denies Defendant's motion for summary judgment.

I. BACKGROUND

Familiarity with the facts of this case, as set forth in detail in the Court's previous orders, is presumed. In summary, the Government's complaint alleges that: Defendant Iwan Mandycz illegally procured U.S. citizenship in violation of the Displaced Persons Act of 1948 ("DPA"), Pub. L. No. 80-774, ch. 647, 62 Stat. 1009 (1948), because he assisted an enemy of the United States in persecution of civil populations; Defendant illegally procured U.S. citizenship in violation of the DPA because he was a member of or participated in a movement hostile to the United States; and Defendant procured U.S. citizenship in violation of 22 C.F.R. § 53.33 (1949) because he acquiesced in conduct and activities contrary to civilization and human decency by serving as an armed guard at *Schutzstaffel* ("SS") labor camps in Poland.

Defendant's motion for summary judgment raises two issues: (1) whether the doctrine of laches bars the Government's suit; and (2) whether due process bars the Government's suit because Defendant is incompetent to stand trial.

II. DISCUSSION

A. LEGAL STANDARD

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment is appropriate where the moving party demonstrates that there is no genuine issue of material fact as

to the existence of an essential element of the nonmoving party's case on which the nonmoving party would bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Martin v. Ohio Turnpike Commission*, 968 F.2d 606, 608 (6th Cir. 1992).

In considering a motion for summary judgment, the Court must view the facts and draw all reasonable inferences therefrom in a light most favorable to the nonmoving party. *60 Ivy Street Corp. v. Alexander,* 822 F.2d 1432, 1435 (6th Cir. 1987). The Court is not required or permitted, however, to judge the evidence or make findings of fact. *Id.* at 1435-36. The moving party has the burden of showing conclusively that no genuine issue of material fact exists. *Id.* at 1435.

A fact is "material" for purposes of summary judgment where proof of that fact would have the effect of establishing or refuting an essential element of the cause of action or a defense advanced by the parties. *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984). A dispute over a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Accordingly, where a reasonable jury could not find that the nonmoving party is entitled to a verdict, there is no genuine issue for trial and summary judgment is appropriate. *Id.*; *Feliciano v. City of Cleveland*, 988 F.2d 649, 654 (6th Cir. 1993).

Once the moving party carries the initial burden of demonstrating that no genuine issues of material fact are in dispute, the burden shifts to the nonmoving party to present specific facts to prove that there is a genuine issue for trial. To create a genuine issue of material fact, the nonmoving

party must present more than just some evidence of a disputed issue. As the United States Supreme Court has stated, "There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the [nonmoving party's] evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249-50 (citations omitted); *see Celotex*, 477 U.S. at 322-23; *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

Consequently, the nonmoving party must do more than raise some doubt as to the existence of a fact; the nonmoving party must produce evidence that would be sufficient to require submission of the issue to the jury. *Lucas v. Leaseway Multi Transportation Service, Inc.*, 738 F. Supp. 214, 217 (E.D. Mich. 1990), *aff'd*, 929 F.2d 701 (6th Cir. 1991). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252; *see Cox v. Kentucky Department of Transportation*, 53 F.3d 146, 150 (6th Cir. 1995).

B. ANALYSIS

1. LACHES DEFENSE

Defendant asserts that he is entitled to summary judgment based upon the equitable doctrine of laches. Specifically, Defendant argues that the Government was not diligent in pursuing this action, and that the Government's lack of diligence prejudiced him.

The defense of laches generally is not available against the Government. *Costello v. United States*, 365 U.S. 265, 281, 81 S. Ct. 534, 5 L. Ed. 2d 551 (1961); *United States v. Summerlin*, 310 U.S. 414, 416, 60 S. Ct. 1019, 84 L. Ed. 1283 (1940); *United States v. Weintraub*, 613 F.2d 612, 618-19 (6th Cir. 1979); *United States v. Arrow Transp. Co.*, 658 F.2d 392, 394-95 (5th Cir. 1981). Accordingly, courts have barred the defense of laches against the Government in the context of denaturalization proceedings. *See Costello*, 365 U.S. at 281 (observing that lower courts consistently have recognized "that delay which might support a defense of laches in ordinary equitable proceedings between private litigants will not bar a denaturalization proceeding brought by the Government"); *United States v. Trifa*, 662 F.2d 447, 448 (6th Cir. 1981) (noting the district court's holding that laches defense is not available in a denaturalization suit); *United States v. Schmidt*, 1990 U.S. Dist. LEXIS 34, No. 88-9475, 1990 WL 6667, at *10 (N.D. Ill. Jan. 3, 1990) (holding that laches is not a defense in a denaturalization proceeding), *aff'd*, 923 F.2d 1253 (7th Cir. 1991); *United States v. Kairys*, 600 F. Supp. 1254, 1264 (N.D. Ill. 1984) (same), *aff'd on other grounds*, 782 F.2d 1374 (7th Cir. 1984); *cf. Fedorenko v. United States*, 449 U.S. 490, 517, 101 S. Ct. 737, 66 L. Ed. 2d 686 (1981) (concluding that "district courts lack equitable discretion to refrain from entering judgment of denaturalization").

This Court concludes that the defense of laches is not available against the Government in a denaturalization proceeding. Therefore, the Court rejects Defendant's argument as a matter of law and need not address whether issues of fact exist that would support the elements of a laches defense.

2. DUE PROCESS DEFENSE

Defendant argues that due process bars this denaturalization proceeding against him because he is incompetent to stand trial. On April 19, 2002, this Court ordered an evidentiary hearing in order to assess the factual basis of Defendant's claim of incompetence. The Court also ordered supplemental briefing on the issue of the appropriate legal standard to apply in assessing a defendant's competence in the context of a denaturalization proceeding. Upon review of the authorities submitted in the parties' supplemental briefs, and for the reasons set forth below, this Court concludes that due process does not prevent a denaturalization proceeding against an incompetent defendant. Thus, the Court need not conduct an evidentiary hearing on this issue.

Defendant asserts that the same due process considerations which bar criminal prosecution of incompetent defendants, *see, e.g., Drope v. Missouri*, 420 U.S. 162, 172, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975), should apply to denaturalization proceedings. Defendant argues "that denaturalization cases differ sharply from typical civil cases, both as to the issues involved and the consequences at stake." The Court rejects this argument on two grounds.

First, denaturalization proceedings are "civil" suits. *Schneiderman v. United States*, 320 U.S. 118, 160, 63 S. Ct. 1333, 87 L. Ed. 1796 (1943); *Brown v. United States*, 234 F.2d 140, 143 (6th Cir. 1956); *United States v. Schellong*, 717 F.2d 329, 336 (7th Cir. 1983) (noting that "a denaturalization suit has never been considered to be a criminal prosecution"; rejecting argument that Article III and the Sixth Amendment require a jury trial in a denaturalization suit). In a civil action, incompetence to stand trial is not a defense. *See* Fed. R. Civ. P. 17(c) (providing for the

appointment of a representative who may sue or defend on behalf of an incompetent person in a civil suit).

Second, the Court finds relevant the due process protections afforded to incompetent defendants in deportation proceedings, which carry a consequence more drastic than denaturalization's consequence. The Supreme Court has noted that "drastic deprivations . . . may follow when a resident of this country is compelled by our Government to forsake all the bonds formed here and go to a foreign land where he often has no contemporary identification." *Woodby v. INS,* 385 U.S. 276, 285, 87 S. Ct. 483, 17 L. Ed. 2d 362 (1966). Indeed, "[t]he immediate hardship of deportation is often greater than that inflicted by denaturalization, which does not, immediately at least, result in expulsion from our shores. And many resident aliens have lived in this country longer and established stronger family, social, and economic ties here than some who have become naturalized citizens." *Id.* at 286. Thus the Supreme Court requires in deportation proceedings the same heightened burden of proof that is required in denaturalization proceedings: "clear, unequivocal, and convincing evidence." *Id.*

Nevertheless, due process does not protect an incompetent defendant from deportation. *Nee Hao Wong v. INS*, 550 F.2d 521, 523 (9th Cir. 1977) (noting that "[d]eportation . . . is not a criminal proceeding, and the full trappings of procedural protections that are accorded criminal defendants are not necessarily constitutionally required for deportation proceedings"); *De Leon-Lopez v. INS*, 1999 U.S. App. LEXIS 28440, No. 98-70901, 1999 WL 993675, at *1 (9th Cir. Nov. 1, 1999); *Sanchez-Salvador v. INS*, 1994 U.S. App. LEXIS 22095, No. 92-70828, 1994 WL 441755, at *1 (9th Cir. Aug. 15, 1994); *see also Nelson v. INS*, 232 F.3d 258, 261-62 (1st Cir. 2000) (noting that INS regulations

"provide[ ] for custodial or other representation of incompetent aliens") (citing 8 C.F.R. § 240.4). This is so despite the fact that "[a]liens subject to deportation proceedings are, indeed, protected by the constitutional right to procedural due process." *Nee Hao Wong*, 550 F.2d at 523 (citing *The Japanese Immigrant Case*, 189 U.S. 86, 100-01 (1903)). Thus, if due process does not protect incompetent defendants from deportation, *a fortiori*, it does not protect incompetent defendants from denaturalization.

For the reasons stated above, this Court concludes that due process does not bar a denaturalization proceeding against an incompetent defendant. Therefore, the Court need not address whether issues of fact exist as to Defendant's competence to stand trial.

Accordingly,

IT IS HEREBY ORDERED that Defendant's motion for summary judgment [Docket Entry 85] is **DENIED.**

SO ORDERED.

Dated: MAY 1st, 2002

/s/ _____
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE